THE HONOURABLE SRI JUSTICE B.SESHSAYANA REDDY

W.P.No. 6203 OF 2005

AND

W.P.No. 10263 OF 2005

Between:-

W.P.No. 6203 OF 2005

Sikharam Laxmaiah …Petitioner

A N D

1. The Joint Collector,Nellore and Others …Respondents.

W.P.No. 10263 OF 2005

Between:

Y.V.Chalapathi Rao. …Petitioner

A N D

1. The Joint Collector, Nellore and Others ..Respondents.

THE HONOURABLE SRI JUSTICE B.SESHSAYANA REDDY

W.P.No. 6203 OF 2005

AND

W.P.No. 10263 OF 2005

COMMON ORDER:

1. These two writ petitions are directed against the order passed by the Joint

Collector in D.Dis.No. E7(a)/2068/2004, dated 28-2-22005.

2. Sikharam Laxmaiah, the petitioner filed application before the Mandal Revenue Officer for regularization of sale on the basis of agreement of sale and for issuance of pattedar pass book/title deed in respect of Ac. 4-00 in Survey No. 1973 of Tummaalapentaa village of Kavali Mandal, Nellore District. The Mandal Revenue Officer regularized the sale and issued pattedar pass book/title deed in his favour.

3. Y.V.Chalapthi, the petitioner in W.P.No. 10263 of 2005 who is respondent No. 4 in W.P.No.6203 of 2005 presented application before the Chief Commissioner of Land Administration. His application came to be forwarded to the Revenue Divisional Officer, Kavali, who took it on file as appeal under the Record of Rights Act.

4. For the sake of convenience the parties herein after referred to as they are arrayed in Writ Petition No. 6203 of 2005.

5. The Revenue Divisional Officer after hearing the parties allowed the appeal and cancelled the pattedar pass book/title deed issued in favour of the petitioner by order dated 20-9-2002 vide reference 4934/2002. Assailing the order of the Revenue Divisional Officer, Kavali, Nellore District, the petitioner filed revision before the Joint Collector, Nellore. The revision filed by the petitioner came to be dismissed by the Joint Collector by order dated 28-2-2005 vide Proceedings Dis.No.E7(a)2068/2004. The conclusion arrived by the Joint Collector needs to be noted and it is thus:

> "*As could be seen from the Re-settlement Register, the land in Sy.No. 1973 measuring Ac. 10-48 is classified as Government dry and no pattadar was mentioned in the column of Pattadar Name. The petitioner has produced one Zerox copy of un-registered agreement which was executed on 16-3-1982 between his son and the petitioner. But, there is no recorded evidence produced by the petitioner regarding link document how the Government land came to him, hence I confirm the orders of the Revenue Divisional Officer, Kavali issued in Rc.f/4934/2002, dated 20-9-2002".*
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> *Regarding issue of Sri P.V. Chalapathi, Sri P.Venkataswamy, the Advocate on behalf of Sri Sikharam Lakshmaiah has informed this Court that Sri P.V.Chalapathi who is resident of Hyderabad now living abroad and his whereabouts are not known. It was also stated by the advocate on behalf of petitioner that there is no record showing that Sri Y.Sreeramulu the father of Sri Y.V.Chalapathi is in possession of the land*

measuring Ac. 4.00 inSy.No. 1973 of Thummalapenta village except mentioning the name in Village records by the Munisiff who has colluded with Y.Sreeramulu who said to be worked in Revenue Department as clerk. Hence, it is proved beyond doubt that Sri Y.Sreeramulu who has worked as Revenue Clerk in Revenue Department with malafide intention to grab the Government landing collusion with the village Munsiff entered his namein the then village records. Subsequently after demise of Sri Y.Sreeramulu the legal heirs i.e., Y.V.Chalapathi and others become legal heirs have no rights to sell the government land to Sri S.Venkateswarlu who is said to be student of Sri Y.V.Chalapathi who is said to be lecturer of Venkatagiri College.

In the circumstances narrated above, the Pattadar Pass book said to be granted to Sri P.V.chalapathi Rao is hereby cancelled under the provisions of Sec. 9 read with Rule 23. As the address of Sri Y.V. Chalapathi is not known, hence no opportunity was given to his as required under Act. The Mandal Revenue Officer, Kavali is directed to take possession of the land immediately".

6. Assailing the order, Sikharam Laxmaiah filed W.P.No. 6203 of 2005 and Y.V.Chalapathi Rao filed W.P.No. 10263 of 2005.

7. Heard the learned counsel for the writ petitioner and the learned Government Pleader for Revenue appearing for Respndents No. 1 to 3 in both the writ petitions.

8. The learned counsel for the petitioner appearing in W.P.No.6203 of 2005 submits that the finding of the Joint Collector that the land claimed by the petitioner is a Government land is not warranted in the circumstances of the case. He further submits that neither the Mandal Revenue Officer nor the Revenue Divisional Officer disputed the fact of land being a patta land and therefore, the conclusion arrived at by the Joint Collector based on some entries to which the petitioner was not put on notice is not legal and proper.

9. The learned counsel for the petitioner appearing in W.P.No.10263 of 2005 submits the finding recorded by the Joint Collector that the father of the writ petitioner managed to include his name in the revenue records is not legal and proper and the same is liable to be set aside.

10. The petitioner in W.P.No.6203 of 2005 initiated proceeding under Record of

Rights Act basing on the agreement of sale said to have been executed in his favour by S.Venkateshwarlu. It is well settled law that validation of agreement of sale is not contemplated under Record of Rights Act. In ***Pochi Reddy Vs. R.D.O. Vikarabad,*** wherein it has been held that validation of unregistered sale deeds from MRO by playing fraud is nonest in law and no order can be allowed to stand if obtained by fraud. In ***K.R.Goud Vs. Bhavanarishi Co-op.,House Building Society,*** it has been held that an agreement of sale cannot be considered as transfer within the meaning of Sec. 5-A. Paras 63 and 64 of the judgment needs to be noted and it is thus:

> *"63. Thus, on the basis of the two documents, the only right which the Society got was a right to seek specific performance of agreements to sell and not any right, title or interest in the land. Assuming a suit was also filed and decree of specific performance was obtained, such a decree for specific performance of contract will not have the effect of conveying right, title and interest in favour of the Society till a deed of sale is duly executed and registered. In Babu Lal Vs. M/s Hazari Lal Kishore Lal (AIR 1982 SC 818) the Supreme Court held that neither a contract for sale nor a decree passed on that basis for specific performance of the contract gives any right or title to the decree holder. The right and the title passes to the dcree holder only on the execution of the deed of sale either by the judgment debtor himself or by the Court in case the judgment-debtor fails to execute the sale deed.*
>
> *64. Even in those cases where pursuant to agreement of sale the transferee takes possession of the land in part performance of the agreement of sale as is the case of petitioner society, such an act also does not confer any title in the landing favour of the transferee. We need not make reference to numerous decisions of the Apex Court in respect of this settled position except by making reference to the decision in PATEL NATWARLAL RUPJI V. KONDH GROUP KHETI VISHAYAK (1996) 7 SCC 690".*

11. In view of the settled proposition of law, the very initiation of the proceedings before the Mandal Revenue Officer basing on the agreement of sale is misconceived. Therefore, whatever orders passed by the Mandal Revenue Officer, Revenue Divisional Officer and Joint Collector are liable to be set aside. So also finding recorded by the Joint Collector that the land for which pattadar pass book/title deed is sought for is a Government land and the father of Y.V.Chalapathi Rao

misused his position and got included his father name cannot be sustained.

12. Accordingly both the writ petitions are disposed of with the above observation given liberty to the parties to approach competent civil Court to establish their respective rights over the land bearing Survey No. 1973 of Thummalapenta village, Kavali Mandal, Nellore District. No order as to costs.

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B.Seshasayana Reddy,J

30th September, 2005.

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THE HONOURABLE SRI JUSTICE B.SESHSAYANA REDDY

W.P.No. 6203 OF 2005

AND

W.P.No. 10263 OF 2005

COMMON ORDER:

30th September, 2005.